

SENATE BILL NO. 28—SENATOR CEGAUSKE

PREFILED FEBRUARY 3, 2005

Referred to Committee on Judiciary

SUMMARY—Prohibits person from knowingly and intentionally capturing image of private area of another person under certain circumstances and prohibits person from knowingly distributing, disclosing, displaying, transmitting or publishing image captured under such circumstances. (BDR 15-8)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; prohibiting a person from knowingly and intentionally capturing an image of the private area of another person under certain circumstances; prohibiting a person from knowingly distributing, disclosing, displaying, transmitting or publishing an image captured under such circumstances; prohibiting the inspection or release of such images under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law creates various crimes against decency and morals and provides
2 penalties to be imposed upon persons who commit such crimes. (Chapter 201 of
3 NRS)
4 This bill prohibits a person from knowingly and intentionally capturing an
5 image of the private area of another person without the consent of the other person
6 and under circumstances in which the other person has a reasonable expectation of
7 privacy. This bill also prohibits a person from distributing, disclosing, displaying,
8 transmitting or publishing an image that the person knows or has reason to know
9 was made under such circumstances. A person who violates either provision for a
10 first violation is guilty of a gross misdemeanor, which means that the person may
11 be punished by imprisonment in the county jail for up to 1 year or by a fine of up to



12 \$2,000 or by both a fine and imprisonment. For a second or subsequent violation,
13 the person is guilty of a category E felony, which means that the court is required to
14 sentence the person to imprisonment in the state prison for a minimum term of not
15 less than 1 year and a maximum term of not more than 4 years, and may fine the
16 person up to \$5,000. The court is then required to place the person on probation
17 after sentencing, unless specific circumstances are established which provide the
18 court with discretion to decide whether to grant probation. Probation is subject to
19 any conditions imposed by the court and may include serving up to one year in
20 county jail. (NRS 193.130)

21 This bill does not prohibit any lawful law enforcement or correctional activities
22 for the purposes of investigating or prosecuting such violations but does prohibit
23 the inspection or release of such images under certain circumstances to protect the
24 privacy of the victim.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 201 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Except as otherwise provided in subsection 4, a person*
4 *shall not knowingly and intentionally capture an image of the*
5 *private area of another person:*

6 *(a) Without the consent of the other person; and*

7 *(b) Under circumstances in which the other person has a*
8 *reasonable expectation of privacy.*

9 *2. Except as otherwise provided in subsection 4, a person*
10 *shall not distribute, disclose, display, transmit or publish an image*
11 *that the person knows or has reason to know was made in*
12 *violation of subsection 1.*

13 *3. A person who violates this section:*

14 *(a) For a first violation, is guilty of a gross misdemeanor.*

15 *(b) For a second or subsequent violation, is guilty of a*
16 *category E felony and shall be punished as provided in*
17 *NRS 193.130.*

18 *4. This section does not prohibit any lawful law enforcement*
19 *or correctional activities.*

20 *5. If a person is charged with a violation of this section, any*
21 *image of the private area of a victim that is contained within:*

22 *(a) Court records;*

23 *(b) Intelligence or investigative data, reports of crime or*
24 *incidents of criminal activity or other information;*

25 *(c) Records of criminal history, as that term is defined in NRS*
26 *179A.070; and*

27 *(d) Records in the Central Repository for Nevada Records of*
28 *Criminal History,*



1 ↪ *is confidential and, except as otherwise provided in subsections*
2 *6 and 7, must not be inspected by or released to any person or*
3 *governmental entity.*

4 6. *An image that is confidential pursuant to subsection 5 may*
5 *be inspected or released:*

6 (a) *As necessary for the purposes of investigation and*
7 *prosecution of the violation;*

8 (b) *As necessary for the purpose of allowing a person charged*
9 *with a violation of this section and his attorney to prepare a*
10 *defense;*

11 (c) *As necessary for the purpose of allowing a defendant in a*
12 *civil action and his attorney to prepare a defense; and*

13 (d) *Upon authorization by a court of competent jurisdiction as*
14 *provided in subsection 7.*

15 7. *A court of competent jurisdiction may authorize the*
16 *inspection or release of an image that is confidential pursuant to*
17 *subsection 5, upon application, if the court determines that:*

18 (a) *The person making the application has demonstrated to the*
19 *satisfaction of the court that good cause exists for the inspection*
20 *or release; and*

21 (b) *Reasonable notice of the application and an opportunity to*
22 *be heard have been given to the victim.*

23 8. *As used in this section:*

24 (a) *“Broadcast” means to transmit electronically an image*
25 *with the intent that the image be viewed by any other person.*

26 (b) *“Capture,” with respect to an image, means to videotape,*
27 *photograph, film, record by any means or broadcast.*

28 (c) *“Female breast” means any portion of the female breast*
29 *below the top of the areola.*

30 (d) *“Private area” means the naked or undergarment clad*
31 *genitals, pubic area, buttocks or female breast of a person.*

32 (e) *“Under circumstances in which the other person has a*
33 *reasonable expectation of privacy” means:*

34 (1) *Circumstances in which a reasonable person would*
35 *believe that he could disrobe in privacy, without being concerned*
36 *that an image of his private area would be captured; or*

37 (2) *Circumstances in which a reasonable person would*
38 *believe that his private area would not be visible to the public,*
39 *regardless of whether he is in a public or private place.*



